

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

JOHN DOE

Plaintiff,

v.

SUMMONS

BOY SCOUTS OF AMERICA
1325 W. Walnut Hill Lane
Irving, TX 75038

Index No.:

Child Victims Act

GREATER NIAGARA FRONTIER COUNCIL #380
2860 Genesee Street
Cheektowaga, NY 14225

Defendants.

To the above named defendants:

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff's attorneys a verified answer to the verified complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: November 11, 2019



Frank M. Bogulski, Esq.
Attorney for Plaintiff
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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

JOHN DOE

Plaintiff,

v.

COMPLAINT

BOY SCOUTS OF AMERICA
1325 W. Walnut Hill Lane
Irving, TX 75038

Index No.:

GREATER NIAGARA FRONTIER COUNCIL #380
2860 Genesee Street
Cheektowaga, NY 14225

Defendants.

Plaintiff, JOHN DOE, by and through his attorney, Frank M. Bogulski, Esq. brings this Complaint against the Defendant and alleges that at all times hereinafter mentioned:

1. Plaintiff is a resident of the Town of Lackawanna, County of Erie, State of New York.
2. Upon information and belief, Defendant Boy Scouts of America (hereinafter referred to as "BSA") is a Texas corporation authorized to do business in New York State.
3. Upon information and belief, at all relevant times the Boy Scouts conducted business as the "Boy Scouts of America" or the "Boy Scouts."

Background

4. In the early 1900s, BSA who that its Scout leaders, volunteers, and members were using their positions in the organization to sexually abuse children who were entrusted into the care the BSA and local councils.
5. The BSA was well aware of the abuse taking place in its organization as evidenced by the fact that the BSA kept files known as the "perversion files" that documented the egregious crimes committed by Scout leaders, volunteers, and members against children within the organization. Unfortunately, the BSA kept these files hidden from the public for many years.
6. Even though the BSA knew that its organization attracted child molester the BSA failed to take any action or safeguards in order to protect the children in its care.

Troop 547

7. Upon information and belief, at all relevant times, the Boy Scouts authorized local councils and organizations to charter, sponsor, and operate Boy Scout Troops, Cub Scout Troops, and other types of Troops throughout New York, including Troop 547 in Buffalo, in which the Plaintiff was a member.
8. Defendant BSA, the local councils, and the local organizations would collectively select the leaders and volunteers of each Boy Scout Troop and Cub Scout Troop in New York, including the leaders and volunteers of the Plaintiff's Troop.
9. The BSA retained and exercised the ultimate authority to decide who could be a leader or volunteer of any Boy or Cub Scout Troop, including the leaders and volunteers of the Plaintiff's Troop when he was sexually abused.
10. Defendant Greater Niagara Frontier Council was a local council of the BSA that acted as an agent of the BSA as to the Boy Scout Troops, Cub Scout Troops, and other Troops under its jurisdiction with the BSA, including the Troop the Plaintiff was a part of when he was sexually abused by Assistant Scoutmaster Raymond Culbertson (hereinafter referred to as "Culbertson").
11. In or around 1958-1959, the Plaintiff was 13 and 14 years old. He was a member of the Defendant's organization. Specifically, he was a boy scout with Troop 547 in Lackawanna, NY, which was a Troop under the auspices of Defendant BSA.
12. At all relevant times Troop 547 and Defendant Greater Niagara Frontier Council were agents of the BSA and were subject to BSA authority and control.
13. Upon information and belief, during the time of the allegations more fully described herein, Culbertson was a Boy Scout leader or volunteer that the Defendant BSA used and relied upon as a Scout Leader or volunteer to Serve the boy scouts in the Plaintiff's Troop.
14. Through his position for the Defendants, Raymond Culbertson was put in direct contact with the Plaintiff. Culbertson used the power bestowed upon him by the Defendants to sexually abuse and harass the Plaintiff.
15. From 1958 to 1959, Culbertson sexually abused the Plaintiff multiple times, including forcible touching without the Plaintiff's consent and rape.
16. At all times herein, Culbertson was under the direct supervision and control of the Defendants.
17. The Defendants knew or should have known the inappropriate and unlawful sexual activities of Culbertson against the Plaintiff.

18. Defendants knowingly condoned and/or covered up Culbertson's inappropriate and unlawful sexual acts against the Plaintiff.
19. Defendants had the responsibility to supervise and/or direct the scoutmasters and assistant scout masters along with all volunteers working under their authority, and specifically, had a duty not to aid Culbertson in his unlawful sexual acts by consistently placing a minor, such as the Plaintiff at the time of the abuse, under his direct and sole control.
20. Plaintiff suffered both physical and psychological injuries and damages as a result of Culbertson's actions, as well as other damages related to the incident herein.
21. As a direct result of the Defendants' conduct described herein, Plaintiff suffered and continues to suffer both to his body and mind, severe and permanent emotional distress that has manifested itself in many negative ways throughout his life.
22. Plaintiff was prevented, continues to be prevented, and will be prevented from performing his normal daily activities and obtaining the full enjoyment of life as a result of the abuse he has suffered.
23. As a result of the damages described herein, Plaintiff has incurred and continues to incur medical expenses related to counseling, therapy, and treatment, along with lost earnings.

**AS FOR THE FIRST CAUSE OF ACTION:
NEGLIGENCE**

24. Plaintiff incorporates herein by reference hereto the allegations of paragraphs "1" through "23" above as if more set forth herein.
25. The aforesaid incidents and injuries as a result of and were proximately caused by the unlawful conduct of Culbertson.
26. Defendants owed a duty to Plaintiff to maintain a reasonably safe environment while he was entrusted into their care.
27. Defendants breached these duties, and as a result of the Defendants' breach of care and the Defendant's other negligence, Plaintiff sustained the injuries, losses, and damages more fully described above without any negligence on the Plaintiff contributing thereto.
28. Accordingly, Plaintiff demands judgment against the Defendants on his first cause of action for an amount in excess of the jurisdiction of all lower courts and such other, further and different relief as this Court may find just, proper, and equitable, together with the costs and disbursements of this action.

**AS FOR THE SECOND CAUSE OF ACTION:
RESPONDEAT SUPERIOR**

29. Plaintiff incorporates herein by reference hereto the allegations of paragraphs "1" through "28" above as if more set forth herein.
30. Defendants' volunteer within the scope of service sexually assaulted the Plaintiff.
31. Plaintiff sustained injuries, losses, and damages more fully described above as a direct result of the conduct of Defendants' employment of Culbertson
32. Culbertson used the power and authority conferred upon him by the Defendants while doing the acts that caused the injuries alleged herein.
33. It was foreseeable that Culbertson may exercise the power and authority the Defendants conferred upon him by engaging in illegal, careless, reckless, and/or other injury-causing conduct.
34. Therefore, the conduct of Culbertson is incident to his employment with the Defendants so as to be attributable to the Defendants.
35. As a direct result of the Defendants' malfeasance and nonfeasance, Plaintiff was prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life, and has incurred and will continue to incur expenses for medical and psychological treatment.
36. Accordingly, Plaintiff demands judgment against the Defendants on his second cause of action for an amount in excess of the jurisdiction of all lower courts and such other, further and different relief as this Court may find just, proper, and equitable, together with the costs and disbursements of this action.

**AS FOR THE THIRD CAUSE OF ACTION:
NEGLIGENT HIRING, RETENTION AND SUPERVISION**

37. Plaintiff incorporates herein by reference hereto the allegations of paragraphs "1" through "36" above as if more set forth herein.
38. Culbertson, whose conduct caused Plaintiff's injuries, was responsible for ensuring the mental, physical, and emotional of the Plaintiff.
39. Culbertson was unfit for employment based on the nature of the job and the likelihood that an unfit employee would cause harm to others.
40. Defendants' choosing of Culbertson to be a leader and volunteer caused the Plaintiff's injuries.

41. By accepting Plaintiff as a Boy Scout and holding out the Defendants' establishment to be a reasonably safe environment for the growth and development of children, Defendants entered into an express and/or implied duty to provide a reasonably safe environment for Plaintiff.
42. At the time of the subject incidents, Defendants had actual or constructive knowledge of Culbertson's unfitness responsible for Plaintiff's injuries.
43. Defendants' knowledge made the harm and injuries to Plaintiff foreseeable.
44. Accordingly, Plaintiff demands judgment against the Defendants on his fourth cause of action for an amount in excess of the jurisdiction of all lower courts and such other, further and different relief as this Court may find just, proper, and equitable, together with the costs and disbursements of this action.

**AS FOR THE FOURTH CAUSE OF ACTION:
BREACH OF FIDUCIARY DUTY**

45. Plaintiff incorporates herein by reference hereto the allegations of paragraphs "1" through "44" above as if more set forth herein.
46. Through his positions in service to the Defendants, Culbertson was put in direct contact with Plaintiff, then a minor Boy Scout. Specifically, Culbertson was assigned to the instruction of the Plaintiff under the Defendants. It was under these conditions that the Plaintiff came under the direct control and authority of Culbertson, who used his position of authority and trust over the Plaintiff to sexually abuse and harass him.
47. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and the Defendants.
48. Pursuant to their fiduciary relationship, Defendants were entrusted with the well-being, care, and safety of Plaintiff. They also assumed a duty to act in the best interests of the Plaintiff.
49. Defendants breached their fiduciary duty as their actions were reckless and taken in a manner that disregarded the rights and safety of the Plaintiff.
50. Accordingly, Plaintiff demands judgment against the Defendants on his fourth cause of action for an amount in excess of the jurisdiction of all lower courts and such other, further and different relief as this Court may find just, proper, and equitable, together with the costs and disbursements of this action.

**AS FOR THE FIFTH CAUSE OF ACTION:
BREACH OF NON-DELEGABLE DUTY**

51. Plaintiff incorporates herein by reference hereto the allegations of paragraphs “1” through “50” above as if more set forth herein.
52. Plaintiff was a minor when placed in the Defendants’ care. Defendants were to provide a safe environment for education and guidance.
53. This was a non-delegable duty of trust between the Plaintiff and Defendants.
54. Defendants were in the best position to prevent Plaintiff’s abuse. Defendants were in the best position to learn of Culbertson’s repeated abuse of Plaintiff and stop it.
55. Because Plaintiff was sexually abused as a Boy Scout, Defendants breached their non-delegable duty to Plaintiff.
56. At all times material hereto Culbertson was under the direct supervision, employment and/or control of the Defendants.
57. Accordingly, Plaintiff demands judgment against the Defendants on his fifth cause of action for an amount in excess of the jurisdiction of all lower courts and such other, further and different relief as this Court may find just, proper, and equitable, together with the costs and disbursements of this action.

**AS FOR THE SIXTH CAUSE OF ACTION:
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

58. Plaintiff incorporates herein by reference hereto the allegations of paragraphs “1” through “57” above as if more set forth herein.
59. As described above, Defendants’ actions were negligent and grossly negligent.
60. Defendants’ actions endangered Plaintiff’s safety and caused him to fear for his own safety.
61. As a direct and proximate result of Defendants’ actions, Plaintiff suffered the severe injuries and damages described herein, including but not limited to mental and emotional distress.
62. Accordingly, Plaintiff demands judgment against the Defendants on his sixth cause of action for an amount in excess of the jurisdiction of all lower courts and such other, further and different relief as this Court may find just, proper, and equitable, together with the costs and disbursements of this action.

**AS FOR THE SEVENTH CAUSE OF ACTION:
BREACH OF DUTY *in Loco Parentis***

63. Plaintiff incorporates herein by reference hereto the allegations of paragraphs “1” through “62” above as if more set forth herein.
64. Plaintiff was a minor when his parents entrusted to the control and supervision of the Defendants for the Plaintiff’s education. Defendants owed a duty to students entrusted to them, like the Plaintiff, to adequately supervise and care for them to prevent injuries to their students.
65. Defendants breached this duty as they were reckless and negligent by disregarding the rights and safety of the Plaintiff.
66. As a direct result of the Defendants’ conduct, Plaintiff suffered injuries and damages described herein.
67. Accordingly, Plaintiff demands judgment against the Defendants on his seventh cause of action for an amount in excess of the jurisdiction of all lower courts and such other, further and different relief as this Court may find just, proper, and equitable, together with the costs and disbursements of this action.

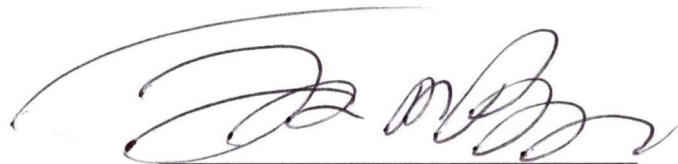
**AS FOR THE EIGHTH CAUSE OF ACTION:
BREACH OF STATUTORY DUTY TO REPORT ABUSE UNDER SOCIAL SERVICE
LAW §§413, 420**

68. Plaintiff incorporates herein by reference hereto the allegations of paragraphs “1” through “67” above as if more set forth herein.
69. Pursuant to New York State Social Service Law §§413 and 420, Defendants had a statutory duty to report reasonable suspicion of abuse of children in their care.
70. Defendant breached that duty by knowingly and willfully failing to report their reasonable suspicions of Culbertson’s abuse of children in their care.
71. As a direct and indirect result of this conduct, Plaintiff suffered injuries and damages described herein.
72. Accordingly, Plaintiff demands judgment against the Defendants on his eighth cause of action for an amount in excess of the jurisdiction of all lower courts and such other, further and different relief as this Court may find just, proper, and equitable, together with the costs and disbursements of this action.

WHEREFORE, Plaintiff demands judgment in against the Defendants in an amount which exceeds the monetary jurisdictional limits of all lower New York State Courts but does not exceed the monetary jurisdictional limits of the New York State Supreme Court.

Plaintiff further demands such other, further and different relief as to the Court may seem just, proper, together with the costs and disbursements of this action.

Dated: Buffalo, NY
November 11, 2019



Frank M. Bogulski, Esq.
Attorney for Plaintiff
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(716) 649-0090